

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION**

THE CONSTRUCTION INDUSTRY)	
RETIREMENT FUND OF ROCKFORD,)	
ILLINOIS and THE CONSTRUCTION)	
INDUSTRY WELFARE FUND OF)	
ROCKFORD, ILLINOIS,)	District Judge:
)	
Plaintiffs,)	Magistrate Judge:
)	
vs.)	Case No:
)	
STARK MASONRY RESTORATION,)	
INC.,)	
)	
Defendant.)	
)	

COMPLAINT

Plaintiffs, The Construction Industry Retirement Fund of Rockford, Illinois and The Construction Industry Welfare Fund of Rockford, Illinois, by their attorneys, WilliamsMcCarthyLLP, bring this Complaint against Defendant, Stark Masonry Restoration, Inc.

**COUNT I
(Failure to Pay Contributions to the Funds)**

1. Jurisdiction in this cause is based upon §301 of the Labor-Management Relations Act (“LMRA”), as amended. 29 U.S.C. § 185(a).
2. Jurisdiction in this cause is also based upon §502 of the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended. 29 U.S.C. § 1132.

3. Venue is proper pursuant to 29 U.S.C. § 1132(e)(2) in this District because The Construction Industry Retirement Fund of Rockford, Illinois and The Construction Industry Welfare Fund of Rockford, Illinois is administered in Rockford, Illinois (collectively referred to as “the Funds” or “Plaintiffs”).

4. The Funds are a multi-employer benefits plans within the meaning of ERISA. They are established and maintained pursuant to Agreements and Declarations of Trust in accordance with § 302(c)(5) of the LMRA. 29 U.S.C. § 186(c)(5). The Funds have standing to sue pursuant to 29 U.S.C. § 1132(d)(1) and 29 U.S.C. § 185(a).

5. Defendant is engaged in the construction industry and is doing business within this geographic area, is an industry affecting interstate commerce, and is an employer within the meaning of § 3(5) of ERISA and § 301(a) of the LMRA.

6. Bricklayers Local Union #6 IL - Rock Island Chapter (“the Union”) is a labor union which represents its members in negotiations and dealing with employers with respect to rates of pay, hours of work, and other conditions of employment.

7. On or about February 28, 2018, Defendant entered into a Memorandum of Agreement with the Union, and the signatory page is attached hereto and made a part hereof as **Exhibit A**.

8. Under the terms of the Memorandum of Agreement, and the Collective Bargaining Agreement and Trust Agreements incorporated therein (the “Agreements”), Defendant is required to make contributions on behalf of its employees covered by the Agreements for pension benefits, health and welfare benefits, apprentice, working dues and to submit monthly remittance

reports in which it identifies the employees covered under the Agreements and the amount of contributions to be remitted to the Funds on behalf of each covered employee.

9. Under the terms of the Agreements, contributions to the Funds are due on the 15th day of the month following the month hours are worked and are considered delinquent after the 25th day of the month.

10. Under the terms of the Agreements, any employer who fails to make the contributions by the 25th day of the month after the work was performed is required to pay an additional amount of ten percent (10%) in liquidated damages, along with all legal fees and costs expended to collect the amounts owed.

11. Under the terms of the Agreements to which Defendant is bound, Defendant is required to submit its books and records to the Funds on demand for an audit to determine benefit contribution compliance.

12. Beginning January 1, 2018, Defendant has failed to report and/or pay contributions and/or liquidated damages owed to the Funds in violation of its contractual obligations and the obligations under State and Federal law. (See **Exhibit B** attached hereto and made a part hereof).

13. As a direct and proximate result of Defendant's failure to pay contributions, Defendant's employees are in jeopardy of losing their health and welfare eligibility and benefits. After giving credits for Defendant's payments made, Plaintiffs believe the approximate amount due and owing is \$154,257.39.

14. Defendant's actions in failing to make timely reports and contributions violate § 515 of ERISA, 29 U.S.C. § 1145, and §301 of the LMRA. 29 U.S.C. § 185.

15. Pursuant to § 502(g)(2) of ERISA, 29 U.S.C. § 1132(g)(2), §301 of the LMRA, 29 U.S.C. § 185, and the terms of the Agreements, Defendant is liable to the Funds for unpaid contributions, as well as interest and liquidated damages on the unpaid and late contributions, reasonable attorney's fees and costs, and such other legal and equitable relief as the Court deems appropriate.

WHEREFORE, Plaintiffs respectfully request that this Court enter a Judgment against Defendant, Stark Masonry Restoration, Inc., as follows:

- (a) Directing Defendant to submit its books and records to an audit on demand by Plaintiffs;
- (b) Entering judgment in a sum certain against Defendant on any amount shown due and owing pursuant to the audit, including unpaid contributions, liquidated damages, interest, audit costs and attorney's fees and costs;
- (c) Enjoining Defendant from violating the terms of the Agreements;
- (d) Awarding Plaintiffs any further legal and equitable relief as the Court deems appropriate; and
- (e) Ordering Defendant to remain current in payment of all contributions to the Funds.

THE CONSTRUCTION INDUSTRY RETIREMENT
FUND OF ROCKFORD, ILLINOIS and THE
CONSTRUCTION INDUSTRY WELFARE FUND
OF ROCKFORD, ILLINOIS, Plaintiffs,

By: WILLIAMSMcCARTHYLLP

/s/ Troy E. Haggstad

Troy E. Haggstad (#06229384)

WILLIAMSMcCARTHYLLP

120 West State Street, Suite 400

P.O. Box 219

Rockford, IL 61105-0219

815/987-8900

thaggstad@wilmac.com

BRICKLAYERS LOCAL UNION #6 IL - ROCK ISLAND CHAPTER
MEMORANDUM OF AGREEMENT

THIS AGREEMENT made and entered into by and between Stark Masonry Restoration Inc./D.B.A Northwest Restoration Co., hereinafter referred to as EMPLOYER, and the ROCK ISLAND CHAPTER OF BRICKLAYERS AND ALLIED CRAFTWORKERS UNION - LOCAL #6 IL, hereinafter called the UNION.

In consideration of the mutual promises of each other the parties hereby AGREE as follows:

1. The employer recognizes the UNION as the sole and exclusive bargaining representative for, and on behalf of, the employees of the EMPLOYER within the territorial and occupational jurisdiction of the UNION. The jurisdiction for this collective bargaining agreement are Mercer and Rock Island counties in IL, Scott county in IA and Fulton Montpelier townships in Muscatine county in IA.
2. The parties do hereby adopt the latest Agreement and all approved amendments between the UNION and the Quad Cities Builders Association. The parties do hereby mutually agree to be bound by all the terms and conditions of the Agreement, the Health & Welfare Trust, and the Retirement/Pension Trusts, including the per hour contributions provided therein, and the Trust Agreement creating the same.
3. This Agreement and the adoption of the Agreement and Trusts referred to in paragraph 2 above shall remain in effect through the expiration date of the Agreement. This Agreement shall continue in effect from year to year thereafter and specifically adopt any Agreement entered into between the union and contractors association subsequent to the expiration date of the Agreement herein adopted unless notice of termination or amendment is given in the manner provided herein.
4. Either party desiring to amend or terminate this Memorandum of Agreement must notify the other party in writing by certified mail with return receipt at least sixty (60) days but not more than ninety (90) days prior to the expiration date of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement the

28th day of February, 2016.

Employer: Stark Masonry Restoration Inc./D.B.A Northwest Restoration Co. BAC Local #6 IL

Tax ID Number: 82-3815290

Rock Island Chapter

Address: 2451 15th Ave

661 Southrock Drive

City, State, Zip: Alexis, IL 61412

Rockford IL 61102

Telephone: 309-586-4144

(815) 963-5311

Mobile: 309-337-1999

FAX: 309-586-4145

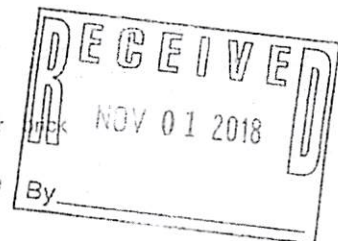
(815) 963-5332

By: Tony Tharp President

By: [Signature]

White - Union Copy

Yellow - Employer Copy



EXHIBIT

tabbies

A

RICHARD J. WOLF AND COMPANY, INC.

Post Office Box 591
Palos Park, Illinois 60464
(708) 923-0909
Fax (708) 923-0910



June 11, 2019

Board of Trustees of the Various
Fringe Benefit Funds of the
Construction Industry Funds

RE: Stark Masonry Restoration Inc. (10897)

We have performed a fringe benefit contribution compliance audit of Stark Masonry Restoration Inc., for the period from January 1, 2018 through April 30, 2019. The audit encompassed the comparison of individual earnings records to certain payroll tax and fund reports and a review of the general disbursement records.

The comparison and review indicate that the employer has not complied with its fringe benefit contribution requirements and owes the following amounts:

<u>FUND</u>	<u>AMOUNT</u>
WELFARE	\$122,937.65
RETIREMENT	\$ 65,030.57
Sub Total	\$187,968.22
10% Liq. Damages	\$ 18,796.82
TOTAL	<u>\$206,765.04</u>


RICHARD J. WOLF AND COMPANY, INC.



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CONSTRUCTION INDUSTRY FUNDS - GROUP #160 - BAC 6 - #6 ROCK ISLAND BRICKLAYERS

STARK MASONRY RESTORATION INC # 10897

YEAR: 2018

ADDITIONAL HOURS 1/18 - 12/18

S. S. #	Flags	Type	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
CHANEY, MICHAEL xxx-xx-xxxx	#	Hours	-	-	-	-	-	-	-	35.00	-	-	-	-	35.00
GILMOUR, TIM xxx-xx-xxxx	#	Hours	-	-	-	-	-	-	-	105.50	143.50	139.50	177.50	138.50	704.50
HARRISON, TERRY xxx-xx-xxxx	#	Hours	-	-	-	-	-	-	-	156.00	119.00	146.00	155.00	154.00	730.00
LINK, COREY xxx-xx-xxxx	#	Hours	-	-	-	-	-	-	-	167.00	132.50	143.50	191.00	155.50	789.50
LINK, FRED xxx-xx-xxxx	#	Hours	-	-	-	-	-	-	-	164.50	-	-	-	-	164.50
LINK, PERRY xxx-xx-xxxx	#	Hours	-	-	-	-	-	-	-	171.50	75.50	-	-	-	247.00
MILLS, FORREST xxx-xx-xxxx	#	Hours	-	-	-	-	-	-	-	135.00	137.50	150.50	167.00	120.00	710.00
OLSON, IAN xxx-xx-xxxx	#	Hours	-	-	-	-	-	-	-	133.00	128.00	116.50	165.00	96.00	638.50
SCHROEDER, RANDY xxx-xx-xxxx	#	Hours	-	-	-	-	-	-	-	-	80.00	53.00	-	-	133.00
VALLEJO, BENEDICT xxx-xx-xxxx	#	Hours	-	-	-	-	-	-	-	12.00	-	-	-	-	12.00
VOS, HANS xxx-xx-xxxx	#	Hours	-	-	-	-	-	-	-	196.00	140.50	152.50	195.00	152.00	836.00
WEEKS, CHRIS xxx-xx-xxxx	#	Hours	-	-	-	-	-	-	-	-	-	-	196.00	154.50	350.50
WILKISON, KEN xxx-xx-xxxx	#	Hours	-	-	-	-	-	-	-	-	45.00	-	-	-	45.00

TOTAL HOURS

-	-	-	-	-	-	-	-	1,275.50	1,001.50	901.50	1,246.50	970.50	5,395.50
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AMOUNT DUE TO
FUNDS:WELFARE
RETIREMENT

TOTAL

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 13,647.85	\$ 10,716.05	\$ 9,646.05	\$ 13,337.55	\$ 10,384.35	\$ 57,731.85
\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 7,219.33	\$ 5,668.49	\$ 5,102.49	\$ 7,055.19	\$ 5,493.03	\$ 30,538.53
\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 20,867.18	\$ 16,384.54	\$ 14,748.54	\$ 20,392.74	\$ 15,877.38	\$ 88,270.38

Rates:	6/1/18	to	5/31/19
WELFARE	10.70	RETIREMENT	6.66

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CONSTRUCTION INDUSTRY FUNDS - GROUP #180 - BAC 6 - #6 ROCK ISLAND BRICKLAYERS

STARK MASONRY RESTORATION INC # 10897

YEAR: 2019

ADDITIONAL HOURS 1/19 - 12/19

S. S. #	Flags	Type	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
GILMOUR, TIM xxx-xx-xxxx	#	Hours	174.00	10.00	90.00	160.00	169.00	-	-	-	-	-	-	-	603.00
HARRISON, TERRY xxx-xx-xxxx	#	Hours	125.00	10.00	78.00	109.00	168.00	-	-	-	-	-	-	-	490.00
LINK, COREY xxx-xx-xxxx	#	Hours	58.00	-	62.00	133.00	164.00	-	-	-	-	-	-	-	417.00
LINK, PERRY xxx-xx-xxxx	#	Hours	-	-	77.00	134.50	162.50	-	-	-	-	-	-	-	374.00
MILLS, FORREST xxx-xx-xxxx	#	Hours	-	-	56.00	147.00	161.00	-	-	-	-	-	-	-	364.00
OLSON, IAN xxx-xx-xxxx	#	Hours	-	-	53.00	125.50	154.50	-	-	-	-	-	-	-	333.00
VOS, HANS xxx-xx-xxxx	#	Hours	175.00	-	70.00	152.00	191.50	-	-	-	-	-	-	-	588.50
WEEKS, CHRIS xxx-xx-xxxx	#	Hours	177.00	10.00	93.00	156.00	168.00	-	-	-	-	-	-	-	604.00

TOTAL HOURS

709.00	30.00	579.00	1,117.00	1,338.50	-	-	-	-	-	-	-	-	-	-	3,773.50
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AMOUNT DUE TO
FUNDS:WELFARE
RETIREMENT

TOTAL

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
WELFARE	\$ 7,586.30	\$ 321.00	\$ 6,195.30	\$ 11,951.90	\$ 14,321.95	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 40,376.45
RETIREMENT	\$ 4,012.94	\$ 169.80	\$ 3,277.14	\$ 6,322.22	\$ 7,575.91	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 21,358.01
TOTAL	\$ 11,599.24	\$ 490.80	\$ 9,472.44	\$ 18,274.12	\$ 21,897.86	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 61,734.46

Rates:	6/1/18	to	5/31/19
WELFARE	10.70	RETIREMENT	6.66

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CONSTRUCTION INDUSTRY FUNDS - GROUP #180 - BAC 8 - #8 ROCK ISLAND BRICKLAYERS

STARK MASONRY RESTORATION INC # 10887

YEAR: 2018

UNREPORTED HOURS 1/18 - 12/18

S. S. #	Flags	Type	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
FOX, GEORGE	#	Hours	-	-	-	-	-	-	-	-	-	-	-	80.00	80.00
xxx-xx-xxxx															
MCKINNEY, TRAVIS	#	Hours	-	-	-	-	-	-	-	-	-	-	155.00	58.00	213.00
xxx-xx-xxxx															
ROLLER, JOSH	#	Hours	-	-	-	-	-	-	-	-	-	-	117.50	151.50	269.00
xxx-xx-xxxx															
SMITH, CODY	#	Hours	-	-	-	-	-	-	-	-	24.00	134.50	162.00	121.00	441.50
xxx-xx-xxxx															

TOTAL HOURS

-	-	-	-	-	-	-	-	-	-	-	24.00	134.50	434.50	410.50	1,003.50
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AMOUNT DUE TO FUNDS:

WELFARE	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 256.80	\$ 1,439.15	\$ 4,648.15	\$ 4,392.35	\$ 10,737.45
RETIREMENT	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 135.84	\$ 761.27	\$ 2,459.27	\$ 2,323.43	\$ 5,679.81
TOTAL	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 392.64	\$ 2,200.42	\$ 7,108.42	\$ 6,715.78	\$ 16,417.28

Rates:	6/1/18	to	5/31/19
WELFARE	10.70	RETIREMENT	6.66

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CONSTRUCTION INDUSTRY FUNDS - GROUP #160 - BAC 6 - #6 ROCK ISLAND BRICKLAYERS

STARK MASONRY RESTORATION INC # 10897

YEAR: 2019

UNREPORTED HOURS 1/19 - 12/19

S. S. #	Flags	Type	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
FOX, GEORGE xxx-xx-xxxx	#	Hours	-	-	83.00	104.00	-	-	-	-	-	-	-	-	167.00
GRAMMER, ETHAN xxx-xx-xxxx	#	Hours	-	-	27.00	152.00	168.00	-	-	-	-	-	-	-	347.00
MCKINNEY, TRAVIS xxx-xx-xxxx	#	Hours	-	-	-	18.00	137.50	-	-	-	-	-	-	-	155.50
ROLLER, JOSH xxx-xx-xxxx	#	Hours	92.00	-	78.00	137.00	77.00	-	-	-	-	-	-	-	384.00
SMITH, CODY xxx-xx-xxxx	#	Hours	-	-	16.00	109.50	138.00	-	-	-	-	-	-	-	263.50

TOTAL HOURS

92.00	-	184.00	520.50	520.50	-	-	-	-	-	-	-	-	-	-	1,317.00
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AMOUNT DUE TO FUNDS:

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
WELFARE	\$ 984.40	\$ -	\$ 1,968.80	\$ 5,589.35	\$ 5,589.35	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 14,091.90
RETIREMENT	\$ 520.72	\$ -	\$ 1,041.44	\$ 2,946.03	\$ 2,946.03	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 7,454.22
TOTAL	\$ 1,505.12	\$ -	\$ 3,010.24	\$ 8,515.38	\$ 8,515.38	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 21,546.12

Rates:	6/1/18	to	5/31/19
WELFARE	10.70	RETIREMENT	6.66

6/11/2019
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CONSTRUCTION INDUSTRY FUNDS - GROUP #160 - BAC 6 - #6 ROCK ISLAND BRICKLAYERS

STARK MASONRY RESTORATION INC # 10897

RICHARD J. WOLF AND COMPANY, INC.

SUMMARY REPORT TOTAL

	<u>ADDITIONAL</u>	<u>UNREPORTED</u>	<u>TOTAL</u>
WELFARE	\$ 98,108.30	\$ 24,829.35	\$ 122,937.65
RETIREMENT	\$ 51,896.54	\$ 13,134.03	\$ 65,030.57
TOTAL	<u>\$ 150,004.84</u>	<u>\$ 37,963.38</u>	<u>\$ 187,968.22</u>

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CONSTRUCTION INDUSTRY FUNDS - GROUP #160 - BAC 6 - #6 ROCK ISLAND BRICKLAYERS

STARK MASONRY RESTORATION INC # 10897

RICHARD J. WOLF AND COMPANY, INC.

**** GRAND TOTAL ****

WELFARE	\$ 122,937.65
RETIREMENT	<u>\$ 65,030.57</u>
TOTAL	<u><u>\$ 187,968.22</u></u>

June 11, 20

L. Accounting records reviewed (please list)
Reports; Check Register

UC3's; 941's; W-2's; Union Reports; Payroll Summary

RICHARD J. WOLF AND COMPANY, INC.
Audit Fact Sheet and Contract Compliance
Audit Work Program

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M. All required accounting records were available with the exception of _____

N. Were any extraordinary auditing expenses incurred while performing this audit?
Yes _____ No X If yes Please Explain _____

O. State findings and briefly describe the nature of the delinquency, if any

<u>Fund</u>	<u>Amount</u>	<u>Reason</u>
Construction Industry Fund	9,169 Hours	Additional Hours
	2,320.5 Hours	Unreported Hours

P. Additional Comments Stark Restoration does mostly brick/tuck pointing restoration work. They do some new installations but mostly caulking and waterproofing. Most of their work is for schools and churches. They had 31 employees in 2018 and so far in 2019. Most of their employees were bricklayers. They also had some laborers and finishers. I'm told that their bookkeeper embezzled \$340,000 from them in 2018. When they noticed this in approx June/July 2018 they had to look at everything to see what was paid and not paid. They stopped paying the unions and paid for their supplies and employees. Tony seemed honest about the situation and knows he owes and is hoping to work with CIF on payment plans. His last contribution on his bricklayers was in July 2018.
They did not have their 2019 1st quarter UC3 so I could not compare payroll with their quarterly. Since the 2018 payroll matched W-2's and quarterlies, I felt pretty confident that the 2019 payroll was good.

Any findings are not based on observation of the employees doing actual work.

Q. Bank Accounts Midwest Bank of Western IL Account # xxxxx0874

R. Type of Company (general, sub, pipeline, etc.) Subcontractor

S. Current "Certified Payroll Projects" as follows:

<u>Job Name</u>	<u>Location</u>	<u>Audit Status</u>	<u>Contract #</u>

Stark Masonry

Audit	\$	187,968.22
Audit LD	\$	<u>18,796.82</u>
	\$	206,765.04

Audit Fee	\$	872.00
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Total	\$	207,637.04
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Payments thru**BAC e-remit 6/18/2019**

Sep-18	\$	2,095.88	
Sep-18	\$	12,965.30	
Oct-18		15075.74	
Oct-18	\$	1,128.15	
Nov-18	\$	4,533.30	
Nov-18	\$	174.24	
Nov-18	\$	17,407.04	\$ 53,379.65

Total Due	\$	154,257.39
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